

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4399 of 1997

to

FIRST APPEAL No 4411 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SADAT DITABHAI SAVABHAI

Appearance:

MR MUKESH PATEL, AGP for Appellants

MR JV JAPPEE for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/07/98

ORAL JUDGMENT

#. These Appeals are directed by the appellants against the common judgment and Award of the Assistant Judge, Sabarkantha at Himmatnagar dated 19.4.97 in Land

Reference Case Nos.928/90 to 940/90 (Main Land Acquisition Case No.937/90), and further arising from one and the same acquisition notice under Section 4 of the Land Acquisition Act, 1894, and as such, the same are being taken up for hearing together and are being disposed of by this common order.

#. The facts of the case are that the Executive Engineer, Roads & Building Division, Himmatnagar, made a proposal vide its letter dated 6.10.88 to the State Government to acquire the lands of village Vanaj, Taluka Vijaynagar, belonging to the claimants-respondents, for the purpose of Vanaj Diversion Road and regarding that a procedure was followed by the Deputy Collector, Sabarkantha, through his letter dated 29.11.88. The Notification under Section 4 of the Act, 1894 was published on 8.2.89 in the Government Gazette. The Notification under Section 6 came to be made on 20.5.89. Under the Award dated 12th September 1989, the Land Acquisition officer, Awarded Rs.50/= per are for Bin-Piyat land, Rs.40/= per are for Piyat land and Rs.1/= for Kharaba land. The claimants-respondents considered it to be a compensation towards a lower side and at their instance, the Land Acquisition Officer made reference of the matters to the Civil Court. The claimants-respondents prayed for the Award of compensation at the rate of Rs.1000/= per are for their Piyat and Bin-Piyat lands. Under the impugned Award, the Reference court has Awarded the compensation to the claimants-respondents at the rate of Rs.450/= per are for the Bin-Piyat lands and Rs.200/= per are for waste lands. Hence this Reference before this Court.

#. The learned counsel for the appellant, with all vehemence at his end, contended that the sale instance which was relied upon by the Reference Court for Awarding the compensation at the rate of Rs.450/= per are for Bin-Piyat lands and at the rate of Rs.200/= per are for waste lands, was not applicable to the facts of the present case. The holders of these lands have no free right of transfer of these lands to anybody. Transfer of these lands was only permissible with permission of the Collector and in view of this restricted covenant on the right of transfer of the holders, the sale instance which has been relied upon by the Reference Court is highly unjustified and illegal. Carrying this contention further, the learned counsel for the appellants contended that the sale instances are also of the sale of the land by Adivasis to some Adivasi trust and it could not have been made a base for determining the amount to be paid to the respondents-claimants. It has next been contended

that the Reference Court has committed a serious error in Awarding the interest on the amount of solatium.

#. The learned counsel for the claimant-respondents, on the other hand contended that it is incorrect to contend on the part of the learned counsel for the appellant that the sale instance was blindly followed by the Reference Court. The sale deed was for 27 are and 32 sq.mt. for Rs.17,000/= and per are the value of the said land comes to Rs.640/=. The said land was of adivasis and it was sold to a trust of Adivasis for some public purpose but that value was not given to the claimants-respondents. Taking into consideration the facts of the restricted right of transfer of the land of sale deeds as well as the distance in between the two lands which were the subject matter of sale deeds and the lands which are subject matter of this acquisition, the Reference Court has sufficiently reduced the figure, i.e. from Rs.640/= per are to Rs.450/= per are, and as such, no interference may be made by this Court in the Award. Carrying this contention further, the learned counsel for the claimants-respondents contended that the sale instance was of the year 1987 and this acquisition is of the year 1989. So taking into consideration the question of inflation in the price of the land, that amount of Rs.450/= per are as Awarded by the Reference Court cannot be said to be towards higher side. It is next contended that the sale instance is a relevant and material piece of evidence for arriving at a figure of just, adequate and reasonable compensation to be Awarded to the respondents-claimants and the Reference Court has not committed any illegality in case it placed reliance on this sale instance. Replying to the second contention made by the learned counsel for the appellants, the learned counsel for the respondents contended that if strictly we go by the operative part of the Award, the Reference Court has not Awarded any interest on the amount of solatium. However, the learned counsel for the respondents-claimants very fairly submitted that in case it is the apprehension of the appellants' counsel that the Award means to Awarding interest on solatium, then necessary observation in this respect may be made as he is unable to justify the Award of allowing the interest on solatium.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. Time and again, during the course of arguments, this Court has asked the learned counsel for the appellants as

to what should be the reasonable amount of compensation to be Awarded in these cases to the respondents-claimants who are Adivasis. However, his insistence is only that this sale instance could not have been relied upon and the matter may be remanded back to determine the compensation on 'yield' basis. However lastly during the course of arguments, the learned counsel for the appellants though stated that his concession may be recorded, to avoid any further delay in the matter Rs.300/= per are may be a just, adequate and reasonable rate for Awarding the compensation to the respondents-claimants.

#. In the matter of determination of just, adequate and reasonable amount of compensation to be Awarded to the claimants-respondents, sometimes the Courts have to make some guess work and sometimes the figure Awarded may appear to be slightly higher or there may appear something arbitrary in awarding the amount of compensation but the Courts, particularly, the appellate Courts, while dealing with the matters in the Appeal, have to take an objective view as well as have to see that socio-economic justice has been done to the claimants-respondents. Mathematical figure may not have been arrived of the compensation which has to be awarded to the claimants-respondents. To arrive at a figure of just, adequate and reasonable compensation, the Court has to opt a reasonable method and where the sale instance is available of the land situated at a reasonable distance, then it is judicially accepted one of the recognized method for determination of the amount of the compensation for the acquisition land to be awarded to the claimants-respondents. In the course of the process to reach to the figure which can be said to be just, adequate and reasonable compensation to the claimants for their compulsory acquisition of lands, relying on the sale instance, the Court has to take into consideration that the lands are situated in vicinity or within proximate reasonable distance and are of same fertility. In addition to that, other considerations may be there but these are foremost and important considerations. In the case in hand, the land which was the subject matter of the sale-deed ex.41 was the land bearing Survey No.40/2 of village Saroli. The lands which are the subject matter of these Appeals are situated at village Vanaj, Taluka Vijaynagar. The distance between two villages, namely Saroli and Vanaj is about four kilometers. The learned counsel for the appellants does not dispute that the sale instance of the lands which are within the radius of 10 Kms. from the lands which are the subject matter of compulsory acquisition are relevant

and material. The distance in between the lands which are the subject matter of the sale deed and subject matter of these Appeals is four kilometers. The executor of the sale deed has been examined by the claimants-respondents in the Reference Court at ex.69. Some more material has been produced including the previous judgment and other sale-deeds, but those were not made any base and the Court has considered the sale-deed ex.41 to be relevant and guiding factor in the present case to determine the just, adequate and reasonable compensation in the present case. The Reference Court has considered that the land which was subject matter of sale ex.41 has been acquired for a trust which has constructed a hospital and boarding for Adivasi children. The trust would have naturally paid the sale consideration from donation and construction would have been made also from the donation received. So the figure of Rs.640/= per are was taken to be towards higher side to be awarded to the claimants-respondents in this case. The court has further noticed that the lands of the respondents-claimants were not acquired for any construction or any other important purpose but were acquired only for diversion. Taking into consideration all these facts, the Reference Court has fixed Rs.450/= per are as the rate to be awarded for the Bin-Piyat lands and Rs.200/= per are for waste land of the claimants-respondents. It is true that this figure may be slightly towards higher side but on the basis of antecedents and surrounding circumstances, the Reference Court has to reach a reasonable conclusion. Reaching to this figure in the facts and circumstances of the present case cannot be said that the Reference Court has acted arbitrarily or this figure is perverse on the face of it. Even if it is taken that the figure is slightly towards higher side, and this figure could not have been reached in the facts of the present case, then too, why this Court should interfere, because as stated earlier, while determining what should be the just, adequate and reasonable amount of compensation to the claimants-respondents, some guess work is permissible or even sometimes the Reference Court may appear to have slightly acted arbitrarily. The figure arrived at by the Reference Court in the aforesaid circumstances of the case if does not appear to be perverse on the face of it no interference of the appellate Court is called for therein. This Court cannot be oblivious of the fact that these lands belong to Adivasis and it cannot be taken that there is a total restriction on their right of transfer of these lands. The transfer of these lands is permissible to other agriculturists, both of general category or Adivasi category, but only on permission of

Collector. So it is not correct to contend on the part of the learned counsel for the appellant that these lands have no saleable value. However, sale consideration of the sale deed has not been relied as a whole and the Reference Court, after giving out due weightage to the other antecedents and surrounding circumstances has reasonably reduced the amount from Rs.640/= to Rs.450/= per are for Bin-Piyat lands.

#. There is one more aspect which needs to be referred in this case. Out of these thirteen Appeals, in eight Appeals, the amount of additional compensation awarded by the Reference Court with solatium is less than Rs.15,000/=. So otherwise also, in these Appeals, no interference is called for by this Court in view of the two Division Bench decisions in the case of (i) Special Land Acquisition Officer v. Shantaben, Chhitubhai's widow and Ors. in Civil Application No. 7876 of 1997 and allied matters, decided on 10.9.97, and (ii) State of Gujarat v. Patel Pujabhai Nathabhai in Civil Application No.8700 of 1997 in First Appeal No.2579 of 1997, and allied matters decided on 21.4.98. In remaining Appeals, though the amount of additional compensation awarded is more than Rs.20,000/=:, this amount is awarded to the Adivasis for acquisition of their lands and looking to this fact, even if it is taken that the amount of compensation awarded may be slightly towards higher side, still keeping in view the class to which the claimants-respondents belong, this Court may not interfere in the appeal.

#. The learned counsel for the claimants-respondents vehemently submitted that this was the only source of livelihood of these persons, though for this, there is no evidence on record, but still in view of the fact that these lands belonged to adivasis, and they were having small pieces of lands in many of the Appeals, it is otherwise in the larger interest of the persons whose lands have been acquired, not to interfere with the Award impugned.

##. Taking into consideration the totality of the facts of this case, no interference is called for of this Court in these matters. So far as the second contention of the learned counsel for the appellants is concerned, it is suffice to say that the Award nowhere reflects that the reference court has awarded any interest on solatium. However, the learned counsel for the respondents agreed that this Court may make it clear that the respondents-claimants shall not be entitled for interest on solatium. In view of this concession made by the

learned counsel for the respondents, and otherwise also, in view of the settled position of law that no interest is payable on solatium, it is hereby clarified that the respondents-claimants shall not be entitled for interest on solatium. Subject to this clarification, the Appeals are dismissed with no order as to costs.

.....

(sunil)